

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:10cv355**

RICHARD A. CAPELL,

Plaintiff,

v.

**NC DIVISION OF VOCATIONAL
REHABILITATION SERVICES,
PAMELA LLOYDE-OGOKE, M.
TERRY HODGES, CHARLOTTE-
MECKLENBURG HOSPITAL
AUTHORITY d/b/a CAROLINAS
MEDICALCENTER, CINDY BOBAY
and KEITH A SMITH,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendant City of Charlotte, Charlotte-Mecklenburg Police Department's Motion to Dismiss (Doc. No. 8), filed September 17, 2010; Defendant Carolinas Medical Center's Motion to Dismiss (Doc. No. 9), filed September 21, 2010; the Magistrate Judge's Memorandum and Recommendation (M&R) (Doc. No. 18), filed October 5, 2010; and Plaintiff's Response ("Question About Order Document Number 18") to the M&R (Doc. No. 22).

Pursuant to 28 U.S.C. § 636(b)(1)(B), United States Magistrate Judge David C. Keesler was designated to consider and recommend disposition of the defendants' motions to dismiss. After reviewing the record, the motions, and applicable authority, the magistrate judge recommended that the motions be denied as moot. (Doc. No. 18 at 1). Defendants did not object. The pro se Plaintiff responded to the M&R by asking for guidance in addressing the fact

that - unlike his original complaint - the Second Amended Complaint did not include Charlotte-Mecklenburg Police Department (CMPD) as a defendant. Plaintiff states:

When I filed my amended complaint and summons I left CMPD out because they had already been served, and until a recent discovery I made, I was not going to pursue them. However in light of new evidence I have discovered I want to make sure CMPD is still going to have to answer for their actions and lack there of.

(Doc. No. 22 at 3).

The Federal Magistrate Act provides that “a district court shall make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); Camby v. Davis, 718 F.2d 198, 200 (4th Cir.1983). “By contrast, in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Similarly, de novo review is not required by the statute “when a party makes general or conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.” Id. Moreover, the statute does not on its face require any review at all of issues that are not the subject of an objection. Thomas v. Arn, 474 U.S. 140, 149 (1985); Camby, 718 F.2d at 200. Nonetheless, a district judge is responsible for the final determination and outcome of the case, and accordingly the Court has conducted a careful review of the Magistrate Judge’s M&R.

Because neither party objected to the magistrate judge’s recommendation, this Court reviews for clear error. Upon consideration of the record and the submissions of the parties, the Court finds, for the reasons stated in the M&R, that the defendants’ motions to dismiss are moot. In order to include CMPD as defendants, Plaintiff should submit a motion to amend his

complaint under Rule 15(a)(2) of the Federal Rules of Civil Procedure, and attach a proposed “Third Superseding Complaint” to the motion that addresses all of his claims against all defendants.

IT IS, THEREFORE, ORDERED, that Defendant City of Charlotte, CMPD’s Motion to Dismiss (Doc. No. 8) and Defendant Carolinas Medial Center’s Motion to Dismiss (Doc. No. 9) be **DENIED AS MOOT.**

The Clerk is directed to send copies of this M&R to the pro se Plaintiff and counsel for the defendants.

Signed: October 27, 2010

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

